

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 08 CIV 4887

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GOKHAN MUTLU,

Plaintiff,

- against -

JETBLUE AIRWAYS CORPORATION,
PILOT, true identity unknown, and
FLIGHT ATTENDANT, true identity unknown,

Defendants.

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PLAINTIFF'S REPLY TO DEFENDANTS' MEMORANDUM IN OPPOSITION

DEREK T. SMITH does hereby affirm under the penalties of perjury the following:

I am a member in good standing of the bar of this Court and am a member of the law firm Akin & Smith, LLC, attorneys for Plaintiff in the above-captioned action. I am familiar with the proceedings in this action.

This reply affirmation is submitted in support of Plaintiff's motion for an extension of time to file his notice of appeal pursuant to Federal Rules of Appellate Procedure 5(A) and in Reply to Defendants' Memorandum in Opposition.

To answer defendant's concerns, (a) Plaintiff Mutlu was originally supposed to come back to New York from Istanbul, Turkey on April 7, 2009. However, due to his father's illness he had to extend his stay in Istanbul Turkey from April 7, 2009 to the present. Plaintiff's counsel did, in fact, send Mr. Mutlu, notice that his case was dismissed and that said notice was received at Mr. Mutlu's New York address well within the time period to file the Notice of Appeal. However, Mr. Mutlu was in Turkey at the time Plaintiff did not learn of the dismissal and his

right to appeal until after his time had expired; (b) Our letter to Plaintiff informed Plaintiff of his 30 day deadline to file a notice of appeal and said letter was in fact received at Mr. Mutlu's New York address well within the 30 day time period to file. If he was in the country he would have met with us and requested that we file the Notice of Appeal. We had no reason to believe that Plaintiff's stay had been extended due to his father's deteriorating condition and that he was still in Turkey. It is for that reason we contacted him at his New York address; (c) Mr. Mutlu was not aware of the deadline to file the Notice of Appeal and was not even aware of the dismissal until May 4, 2009, after the time had expired. Mr. Mutlu's wife was traveling for business and it was not until returning to their home in New York that she was able to read the mail and call Plaintiff in Turkey from their home in New York, again only after the deadline to file the notice of appeal. Our office made no attempts to contact Mr. Mutlu in Turkey because we were informed that he would be back around April 7th. Once Mr. Mutlu was contacted by his wife, he immediately contacted our firm to discuss the case; (d) Our letter to Plaintiff enclosing the dismissal clearly informed Mr. Mutlu of the 30-day deadline to file a notice of appeal and the fact that we were not handling his appeal pursuant to our retainer agreement. We did not discuss the dismissal or appeal until May 4th which is when Mr. Mutlu learned for the first time that the case was dismissed. (e) Plaintiff did not undertake any efforts to locate appellate counsel in advance of the April 30th deadline because, as stated above, he was not aware of the dismissal or the right to appeal until May 4, 2009. Due to the fact that Plaintiff was in Turkey tending to his ailing father, he had to extend his stay and he did not receive the word of the dismissal until after the deadline to file a notice of appeal had expired.

WHEREFORE, it is respectfully requested that Plaintiff's motion to extend his time to file his notice of appeal be granted together with such other relief, which this court deems just and proper.

We thank the Court for its time and consideration.

Dated: New York, New York
May 15, 2009

Respectfully submitted,

AKIN & SMITH, LLC

By: 

Derek T. Smith (DTS 1747)

Attorneys for Plaintiff

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